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March 30, 1992

Mr. F. Burnell Cordner
Division of Air Quality
Department of Environmental Quality
1950 West North Temple
Salt Lake City, Utah 84116-4820

Dear Mr. Cordner:

SO2 State Implementation Plan

Enclosed please find a copy of the written comments of the Intermountain Power Project regarding the revisions to the State Implementation Plan for sulfur dioxide that have been proposed by the Utah Air Quality Board.

We hope that these comments will assist you and your agency in its decision-making process for protecting air quality. These comments are submitted by the Los Angeles Department of Water and Power (LADWP), the Operating Agent for the Intermountain Power Agency.

If you have any questions, please contact Mr. John W. Schumann, LADWP Manager of Research and Development, at (213) 481-8676 or Mr. Ronald L. Rencher, Attorney from LeBoeuf, Lamb, Leiby & MacRae, at (801) 355-6900.

Sincerely,

Bruce E Blowey/s

BRUCE E. BLOWEY
Assistant Engineer in Charge
of Operation and Maintenance

Enclosure

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COMMENTS OF
INTERMOUNTAIN POWER PROJECT
ON
THE PROPOSED REVISIONS OF
THE UTAH STATE IMPLEMENTATION PLAN FOR SULFUR DIOXIDE

SUBMITTED BY:

Los Angeles Department of Water and Power
As An Operating Agent For
Intermountain Power Project

Date: March 31, 1992

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EXECUTIVE SUMMARY

The purpose of these comments is to present the concerns and positions of the Intermountain Power Project (IPP) regarding the rule changes that the Air Quality Board (Board) has proposed to Utah's State implementation plan (SIP) for sulfur dioxide (SO_2). Since the Board's SIP revisions appear to have been based on policy guidance provided by the Environmental Protection Agency (EPA), the comments also provide IPP's general views and concerns regarding EPA's policy guidance on three-hour SO_2 compliance averaging times.

The IPP consists of a consortium of mainly Utah and California utilities that have an interest in the Intermountain Generating Station located in Millard County, Utah. The Intermountain facility is a 1,784 MW coal-fired power plant that began commercial operation in 1986.

I. SUMMARY OF THE COMMENTS ON EPA'S POLICY GUIDANCE

EPA's policy guidance indicates that a SO_2 SIP is per se deficient if the emissions limits or the monitoring requirements are based on averaging times greater than three hours. EPA's rationale for this requirement appears to be that such short-term averaging times are necessary to ensure the protection of the three-hour national ambient air quality standard (NAAQS) for SO_2.

A. Scope of EPA's Policy Guidance

EPA has made it clear that its policy guidance extends only to sources located in nonattainment areas and sources whose emissions limitations are set out in the general SO_2 SIP document rather than in Utah Approval Orders. Since the Intermountain facility is not covered under either of these criteria, the facility should not be subject to EPA's policy guidance.

B. Nature of EPA's Policy Guidance

EPA has characterized its guidance as "nonbinding" statements of general policy. This characterization indicates that -- to the extent that EPA's policy guidance could apply to the Intermountain facility -- Utah is authorized to apply it only on a case-by-case basis, depending on the specific facts regarding the operation of the facility.

C. Air Quality Impacts

The best available information regarding the local and State air quality for SO_2 weigh strongly against imposing three-hour averaging times. For example, Utah has not recorded a violation of the short- or long-term SO_2 NAAQS anywhere in the State since 1980. Moreover, post-construction monitoring covering three years and extensive air impact

analysis modeling demonstrate that the three-hour SO_2 standard is not jeopardized in any manner by the SO_2 emitted from the Intermountain facility.

D. Violation of Notice and Comment Rulemaking

If EPA intends to require states to impose a three-hour averaging period on SO_2 SIP limitations in every case, IPP believes that this major shift in policy could be accomplished only pursuant to notice and comment rulemaking. Any effort by EPA to enforce this averaging policy without adequate consideration of the facts and law underlying that policy would constitute a violation of the notice and comment procedures of the Clean Air Act (CAA) and the Administrative Procedures Act.

If, however, this is not the intent of EPA, then Utah and other states should be allowed truly to exercise discretion in developing SIP compliance strategies for stationary sources located within the State.

E. State Limitations on SO_2 SIP Changes

Utah law explicitly precludes the State requirements from being more stringent than the corresponding federal CAA standards unless the Board issues a written finding that the stricter State requirements are necessary to protect the public health and the environment.

This State limitation precludes the Board -- absent the requisite finding -- from imposing SO_2 SIP revisions on sources not located in SO_2 nonattainment areas. Similarly, the Board is precluded from establishing three-hour SO_2 limitations, if these more stringent limits are not necessary for the protection of the short- and long-term SO_2 NAAQS.

F. Federal Limitations on SO_2 SIP Changes

The federal CAA law does not authorize the mechanical conversion of existing New Source Performance Standards (NSPS) percent reduction requirement, or the BACT limitation that are applicable to the Intermountain facility.

G. Guidelines for Establishing Three-Hour Limits

States should retain without change the existing long-term SO_2 limitations applicable to sources. If states determine that a three-hour limitation is necessary for the protection of the short-term NAAQS, this could be accomplished by establishing an equivalent SO_2 limitation based on three-hour averaging times.

The equivalent short-term limit should be based on various source-specific factors, including the observed meteorological conditions in the vicinity of the facility, SO_2 emissions controls installed at the facility, sulfur content and sulfur variability of the coal burned, and air impact analyses determined through dispersion modeling.

II. SUMMARY OF COMMENTS ON THE BOARD'S PROPOSED SO_2 SIP CHANGES

IPP has several concerns regarding the proposed SIP changes to Rule 4.2.1 on "Sulfur Content of Fuels" and Rule 4.6.2 on "Continuous Emission Monitoring System Program." The comments provide a technical analysis of the proposed rule changes, and where appropriate, recommendations and technical amendments designed to address IPP's concerns.

A. Proposed SIP Changes to Rule 4.2.1

The proposed revisions to Rule 4.2.1 contain ambiguous language as to the sources subject to sulfur content limitations and new fuel sampling analysis protocols imposed under the rule. This ambiguity could have the anomalous result of imposing onerous and redundant SO_2 compliance requirements on NSPS-regulated sources, even though they are (1) already subject to very stringent SO_2 limits and percent reduction requirements, (2) located in attainment areas, and (3) currently operate with a continuous emissions monitoring system (CEMS) for SO_2.

IPP recommends that the Board amend its proposed language to clarify that the proposed rule changes do not apply to sources not located in SO_2 nonattainment areas or NSPS-regulated sources. Technical amendments correcting these concerns and problems are attached to the comments in Attachment E.

B. Proposed SIP Changes to Rule 4.6.2

The Board has proposed a revision to Section 4.6.2 that would require that the CEMS monitoring and reporting requirements be based on three-hour averaging times. The Board's proposal, however, would apply to all fossil fuel fire steam generating units (250 million Btu/hour for each boiler), whether or not they are subject to NSPS regulation. Similarly, the proposal would apply to sources without regard to whether they are located in an attainment or nonattainment area.

IPP recommends that the proposed three-hour averaging requirement should not be imposed on NSPS-regulated sources and sources regulated in SO_2 attainment areas. Again, technical amendments correcting these concerns are attached to the comments in Attachment E.

COMMENTS ON
THE PROPOSED REVISIONS OF
THE UTAH STATE IMPLEMENTATION PLAN FOR SULFUR DIOXIDE

The Utah Air Quality Board (Board) has proposed changes to the existing State Implementation Plan (SIP) for sulfur dioxide (SO_2) in order to fulfill sections 172(b) and 191(b) of the Clean Air Act (CAA). The Intermountain Power Project (IPP) appreciates the opportunity to submit the following comments on Utah's proposed SO_2 SIP changes as they relate to the establishment of three-hour averaging times for sulfur content limitations, SO_2 emissions limitations, and emissions monitoring and reporting requirements. IPP is vitally concerned about these issues and opposes the changes proposed for the reasons stated below.

The IPP consists of a consortium of mainly Utah and California utilities that have an interest in the Intermountain Generating Station (IGS or Intermountain facility) located near Delta Utah, in Millard County, Utah. Intermountain Generating Station has two separate coal-fired units with a total generating design capacity of about 1,784 MW. The Intermountain facility began commercial operation in 1986.

I. IPP'S COMMITMENT TO THE ENVIRONMENT

IPP approaches this rulemaking with a strong commitment to the environment in the State of Utah. IPP supports the Board in its efforts to ensure the achievement and maintenance of the national ambient air quality standards ("NAAQS") for SO_2. This includes not only the annual and 24-hour concentration levels established as the primary standards, but also the three-hour concentration levels established as the secondary standards.

A. IGS Is One Of The Cleanest Coal-Fired Utility Units Operating In The Country.

IPP's environmental record with the Intermountain facility underscores this commitment. IPP has worked closely with the Board to ensure that the Intermountain facility is among the cleanest coal-fired electric utility generating stations in the country. As for SO_2, each of the 892 MW generating units operates with a state-of-the-art flue gas desulfurization (FGD) system and meets the very stringent permitted SO_2 emissions limitation of 0.15 lbs/mmBtu, along with the New Source Performance Standards (NSPS) requirement for 90 percent removal of flue gas.

These limitations are among the most stringent in the country for a coal-fired power plant, especially for a facility of this size.[1/] By way of comparison, IGS's SO_2 limitations are eight times more stringent than the Phase II SO_2 limitation of 1.2 lbs/mmBtu imposed on coal-fired power plants under the acid rain title of the CAA by the year 2000.

B. Utah's Air Quality Is Currently Being Protected.

Local and State air quality for SO_2 has not been compromised by the operation of the facility. Both IPP units are located in an attainment area for SO_2. Moreover, no violation of the short- or long-term SO_2 NAAQS have been recorded in the State since 1980.

1/ For example, the Intermountain facility is not allowed -- as provided under the federal NSPS regulations -- to reduce the SO_2 percent removal levels down to 70 percent when the uncontrolled SO_2 emissions fall below 0.6 lbs/mmBtu. Rather, IPP's Approval Order requires IGS to remove at least 90 percent of the SO_2 emissions at all times, regardless of SO_2 emissions levels and the type of coal burned. IPP currently burns only low-sulfur Utah coal, with sulfur content levels well below 1.0 lbs/mmBtu as proposed in Rule 4.2.1. To ensure compliance with this very onerous percent reduction requirement, IPP has installed a redundant FGD system, which is comprised of six scrubber modules for each generating unit, of which four modules are always operating for each unit at the Intermountain facility.

The air quality data also reveal that the operation of IPP's units poses no threats to the short-term standard. In fact, the maximum three-hour SO_2 concentrations recorded from June 1986 through May 1989 were about four percent of the corresponding NAAQS. This recorded value is representative of typical background pollutant levels in rural areas. Similarly, air impact analysis modeling has predicted "worst case" concentration estimates of only about six percent of the three-hour SO_2 standard.

II. IPP'S INTERPRETATION OF THE PROPOSED CHANGES

No violation of the primary or secondary SO_2 NAAQS has been registered in Utah since 1980. Utah, nevertheless, is required under sections 172(b) and 191(b) of the CAA to submit to the Environmental Protection Agency (EPA or Agency) a nonattainment plan (NAP) that revises its existing SO_2 SIP.[2/] Utah is required to submit these SIP revisions for two SO_2 nonattainment areas[3/] for which the State lacks a federally approved SIP.[4/]

[2/] Section 191(b) of the CAA requires states lacking a "fully approved implementation plan" to submit revised SO_2 SIPs for areas designated nonattainment for the primary SO_2 standard. States must submit revised SO_2 SIPs to EPA by May 15, 1992. States also are required under section 172(b) to submit to EPA SO_2 SIP revisions for areas violating the secondary SO_2 standard by November 15, 1993. EPA, however, has issued SO_2 nonattainment guidance indicating that "absent compelling justification," states should meet the May 15, 1992 deadline for the submission of the revised SIP for secondary SO_2 NAAQS. Memorandum, dated May 31, 1991, from John Calcagni, Director of the EPA Air Quality Management Division, entitled "SO_2 Nonattainment Area SIP Guidance: Final Staff Work Product" at page 5 (attached hereto in Attachment A).

[3/] The State of Utah contains two areas classified as nonattainment for the primary and secondary SO_2 standards: Salt Lake County and Tooele County. 40 C.F.R. § 81.52. For each of these areas, Utah lacks a fully approved SO_2 implementation plan and thus must submit a revised SO_2 SIP pursuant to sections 172(b) and 191(b).

[4/] In addition, Utah nonattainment areas may not be redesignated to attainment until (among other things) Utah has in place a fully approved SO_2 SIP for each of the nonattainment areas. See section 107(d)(3)(E) of the CAA.

In response to this CAA requirement, the Board has proposed changes to Utah's SO_2 SIPs. The Board's proposal includes substantial revisions to Rule 4.2.1 on "Sulfur Content of Fuels." The SIP revisions would (1) require the sulfur content limitations to be based on a three-hour rolling average; and (2) establish a new fuel sampling and analysis protocol, also based on three-hour averaging times.

As drafted, the proposed rule changes could be read to apply to virtually all major sources of SO_2 emissions in Utah. Moreover, they would apply without regard to whether the affected sources are located in a SO_2 attainment or nonattainment area and without regard to whether the more stringent control requirements imposed on the affected sources are necessary to protect the federal SO_2 standards.

The Board also has proposed changes to Rule 4.6.2 on "Continuous Emission Monitoring System Program." Among other things, these changes would require that Utah's continuous emissions monitoring requirements for major utility sources be based on a three-hour rolling average. Again, the Board has proposed that these revisions would apply without regard to the location or the air quality impact of the affected source.

The above proposed SIP revisions appear to have been based on policy guidance provided by EPA to Utah and to other states. Among other things, this policy guidance advises states that all SIP limitations and monitoring requirements must be based on compliance averaging times of three hours or less. The rationale for this requirement appears to be that such a short-term averaging period is necessary to ensure the protection of the three-hour SO_2 ambient air quality standard.

III. COMMENTS ON EPA POLICY GUIDANCE ON SO_2 AVERAGING

A. EPA Has Issued Nonbinding Policy Guidance For Preparing Revised SO_2 SIPs.

The CAA charges EPA with the responsibility of providing guidance and technical assistance to states in preparing adequate and approvable SIPS.[5/] In the case of the SO_2 NAAQS, EPA has issued various policy guidance documents, including the so-called "SO_2 Yellow Book"[6/] and a recent memorandum from John Calcagni, Director of the EPA Air Quality Management Division regarding SIP guidance for SO_2 nonattainment areas (Calcagni Memorandum).[7/]

1. EPA Guidance on SO_2 Averaging

Utah's proposed SIP changes appear to be based on EPA policy guidance regarding SO_2 SIP revisions. This guidance suggests that a SO_2 SIP (or NAP in the case of nonattainment areas) is per se deficient if the emissions limits, or the monitoring requirements, are based on averaging times greater than three hours. In cases where sources are subject to long-term emissions limits (based on, for example, thirty-day averaging times), the policy guidance suggests that states should correct these "deficiencies" by mechanically

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5/ See section 172(d) of the CAA (providing that "to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this Act, the [EPA] Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States").

6/ Office of Air Quality Planning and Standards, Sulfur Dioxide SIP Deficiencies (June 11, 1991) [hereinafter "EPA Yellow Book"].

7/ See Memorandum, dated May 31, 1991, from John Calcagni, Director of the EPA Air Quality Management Division, entitled "SO_2 Nonattainment Area SIP Guidance: Final Staff Work Product" (attached hereto in Attachment A) [hereinafter "Calcagni Memorandum"].

converting long-term emissions limits into limits based on a compliance averaging time of three hours or less.

EPA's rationale for this requirement appears to be that such short-term averaging times are necessary to ensure the protection of the three-hour SO_2 NAAQS. No factual basis, however, has been provided to support EPA's SO_2 averaging policy; nor has the policy been subject to public notice and comment.

2. Scope of Policy Guidance

EPA states that its policy guidance applies only to nonattainment areas.[8/] To the extent that EPA's guidance on SO_2 proves to be valid, this statement makes clear that the guidance does not cover sources such as IGS, which are located in attainment areas.

In addition, EPA has indicated that the Yellow Book did not review the "enforceability of SO_2 provisions in Approval Orders" in making its determination regarding SO_2 NAP deficiencies.[9/] Again, this demonstrates that EPA's guidance does not extend to the Intermountain facility, whose SO_2 limits are set forth in an Utah Approval Order.

3. Nature of Guidance

The Agency has expressly characterized, on numerous occasions, its guidance as nonbinding statements of general policy not finally determinative of individual

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[8/] Calcagni Memorandum at 1.

[9/] EPA Yellow Book at C-6-26.

rights or responsibilities.[10/] As nonbinding statements of general policy, they are subject to reconsideration. Furthermore, EPA has stated --

> Agency decisions in any particular case will be made by applying the applicable law and regulations to the specific facts of the case. In any proceeding in which the policy articulated in this guidance document may be applied, the Agency will thoroughly consider the policy's applicability to the facts, the underlying validity of the policy and whether changes should be made in the policy based on submissions made by any person.[11/]

This language suggests that EPA's policy on SO_2 averaging guidance should not be viewed as a generic legal rule that Utah should apply in every case. At most, Utah should be allowed to apply EPA's policy guidance on a case-by-case basis, depending on the specific facts of each particular case.

B. EPA's Enforcement Of The Policy Guidance May Constitute A Violation Of Notice And Comment Rulemaking.

Notwithstanding EPA's characterization of its policy guidance as nonbinding, IPP has concerns regarding the implementation of the Agency policy guidance on SO_2 averaging. Considerable evidence suggests that EPA intends to enforce this guidance as a generic legislative rule applicable in every case.[12/]

[10/] See Calcagni Memorandum at page 2 (stating that policy guidance is "nonbinding"); see also Letter, dated February 19, 1992, from Raymond B. Ludwiszewski, Acting EPA General Counsel to Robert L. Brubaker (affirming the Calcagni Memorandum regarding the nonbinding nature of EPA policy guidance) (attached hereto in Attachment B) [hereinafter "Brubaker Letter"].

[11/] Calcagni Memorandum at page 2. EPA Office of General Counsel recently reiterated its position regarding the nonbinding nature of the Yellow Book and other guidance on SO_2 SIP revisions. See Brubaker Letter (quoting the Calcagni Memorandum regarding the nonbinding nature of EPA policy guidance).

[12/] The Yellow book and other EPA documents clearly state that the Agency will consider a SIP rule to be unenforceable -- and thus subject to revision -- if it fails to meet any of a long list of criteria. For example, these documents contain guidance indicating that states

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Requiring Utah to enforce three-hour averaging times for all existing SO_2 SIP limitations would represent a major change in existing policy. EPA, however, has provided no factual or legal basis for requiring -- as a general rule -- that the SO_2 SIP emissions limitations for all stationary sources be based on three-hour averaging times. In fact, the only conclusion so far reached by EPA appears to be that "the Agency has made no generic determination that the long term compliance averaging can or cannot assure protection of the short term NAAQS."[13/]

If EPA intends to require States to impose a three-hour averaging period on SO_2 SIP limitations in every case, IPP believes that this major shift in policy could only be accomplished pursuant to notice and comment rulemaking as required by the CAA[14/] and the Administrative Procedure Act.[15/] Such a rulemaking would require a finding that

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12/ (...continued)
should consider SO_2 emissions limits deficient if their averaging times exceed three hours. See EPA Yellow Book at 1 and 82; Environmental Protection Agency, SO_2 Guidance at 6-2 (October, 1989) (Document No. EPA-450/2-89-019). Similarly, the Yellow book contains a checklist that considers emissions limitations with long-term averaging times to be deficient. See EPA Yellow Book at A-3.

13/ Approval and Promulgation of Implementation Plans; Indiana, 50 Fed. Reg. 38,003 (1985).

14/ See 42 U.S.C. § 7607.

15/ See 5 U.S.C. § 553. If the agency action is considered to be a legislative rule, then notice and comment procedures must be followed. See General Motors Corp. v. Ruckelshaus, 742 F.2d 1561, 1564-65 (D.C. Cir. 1984). To be considered a "legislative rule" subject to § 553, an agency action must have a present day and prospective effect in that it imposes rights and obligations upon parties, and it must leave the agency little or no discretion in applying the rule. See Community Nutrition Institute v. Young, 818 F.2d 943, 946 (D.C. Cir. 1987); see also Thomas v. State of New York, 802 F.2d 1443, 1446-47 (D.C. Cir. 1986) (holding that notice and comment procedures apply if EPA's action is of general or particular applicability and future effect with a design of implementing law or policy).

short-term averaging was necessary for the attainment and maintenance of the primary and secondary SO_2 NAAQS.

Any effort by EPA to enforce this averaging policy without an adequate consideration of the facts and law underlying that policy would constitute a violation of those notice and comment procedural requirements.[16/]

It is also important to note that EPA attempted to establish three-hour averaging times for all SO_2 sources through formal rulemaking.[17/] IPP has concerns that EPA may be attempting to achieve through informal policy guidance the end result that it could not achieve through the notice and comment rulemaking process. Given the national importance of this issue, IPP recommends that states should not be required to implement EPA's guidance on SO_2 averaging until this issue is properly resolved in accordance with the requisite rulemaking procedures.

C. Federal CAA Provides States With Much Flexibility In Developing Revised SO_2 SIPs.

As a general matter, states are accorded broad discretion under the CAA in developing SIP control strategies. EPA is required to approve any SIP submitted by a state so long as the SIP ensures the achievement and maintenance of the federal ambient air quality

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16/ If, however, EPA's intent is not to establish a generic binding rule, then Utah and other states should be allowed truly to exercise discretion in developing SIP compliance strategies for stationary sources located within the State. For Utah, this strategy would involve the Board, evaluating and revising (where appropriate) SIP SO_2 limitations to ensure that they are stringent enough to protect all of the SO_2 ambient air quality standards, including the three-hour standard.

17/ See Regulation of Large Coal-Fired Boilers for SO_2 Emissions, 45 Fed. Reg. 9994 (1980) (Public Notice).

standards, and meets or exceeds all other applicable federal CAA requirements.[18/] This discretion is not limited to the development of the initial SIP, but also extends to "any revision" to that SIP.[19/]

In the case of the SO_2 nonattainment areas, section 172(c) establishes minimum federal requirements that states must meet in developing their NAPs. None of these requirements provides that emissions limitations contained in the SO_2 NAP must be based on three-hour compliance averaging times.[20/]

Moreover, the NAP requirement regarding emissions limitations is very general in nature. The CAA provides states with the discretion to prescribe "enforceable emission limitations . . . as may be necessary or appropriate to provide for the attainment" of NAAQS by the mandated attainment deadline(s).[21/] This language makes it clear that the Board is

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[18/] The Supreme Court has provided unequivocal guidance as to the state\federal relationship in developing SIPs. The Court stated that the CAA "gives the Agency no authority to question the wisdom of a State's choice of emission limitations if they are part of a plan which satisfies the standards of § 110(a)(2) . . . . " Train v. Natural Resources Defense Council, 421 U.S. 60, 79 (1975) (emphasis added). By contrast, EPA "is relegated by the Act to a secondary role in the process of determining and enforcing the specific, source-by-source emission limitations which are necessary if the national standards it has set are to be met." Id.

[19/] Connecticut Fund for the Environment, Inc. v. Environmental Protection Agency, 696 F.2d 169, 173 (2d Cir. 1982) (stating the EPA "must approve any revision to a SIP if it conforms to the eleven criteria set by the Act").

[20/] See section 172(c) of the CAA (establishing the federal requirements for NAPs); see also section 110(a)(2) of the CAA (establishing the federal requirements for SIPs); section 302(k) of the CAA (defining "emission limitation" to mean "a requirement established by the State or the Administrator which limits the quality, rate, or concentration of emissions of air pollutants on a continuous basis . . . ").

[21/] Section 172(c)(6) of the CAA (emphasis added). Section 172(c)(7) requires that sources covered under the NAP also comply with the general SIP requirements imposed

(continued...)

not subject to any specific federal CAA requirement to establish three-hour compliance averaging times for the SO_2 emissions limitations. Moreover, the statutory language, as well as the general structure of the CAA, provide the Board with broad discretion in selecting the appropriate averaging times for sources covered under the NAP.

Accordingly, EPA has no authority to object to averaging times greater than three hours, unless the Agency has a factual basis to conclude that longer-term averaging times are "substantially inadequate" to protect the SO_2 NAAQS.[22/]

D. Utah Law Establishes Limitations On When Revised SIP May Be More Stringent Than The Federal Standard.

Although the CAA expressly allows states to establish standards more stringent than the corresponding federal requirements, Utah state law imposes specific constraints as to when the Board may promulgate stricter SIP or NAP standards. Specifically, Section 19-2-106 of Utah's Air Conservation Act allows the establishment of stricter state standards only if the Board makes a written finding that the corresponding federal regulations are not adequate to protect the public health and the environment.

The Utah statute requires that the Board's finding be based on evidence in the record, after public comment and hearing. In addition, the finding must be "accompanied by an

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21/ (...continued)
under section 110(a)(2). This section contains a SIP requirement that is virtually identical to the NAP requirement for enforceable emissions limitations. See section 110(a)(2)(A) of the CAA.

22/ Section 110(a)(2)(H)(ii) of the CAA (requiring states to revise SIPs "whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard . . . ").

opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis of the board's conclusion."[23/]

This State requirement imposes significant restrictions on the Board's discretion to develop a NAP for SO_2 nonattainment areas. As discussed below in greater detail, the Board is precluded -- absent the requisite written finding -- from imposing NAP requirements on sources not located in SO_2 nonattainment areas. Similarly, the Board is precluded from converting long-term SO_2 emissions limitations to more stringent three-hour limits if such limits are unnecessary for the attainment and maintenance of the short- and long-term SO_2 NAAQS.

E. Absent The Requisite Finding, Utah's NAP May Not Apply To SO_2 Attainment Areas.

1. Scope of Revised SIP

The CAA imposes a federal obligation on states to submit a revised SO_2 SIP only for areas designated nonattainment for SO_2. This is reflected by the fact that the revised SIPs are referred to under the CAA as nonattainment plans or "NAPs."[24/] States are required under the CAA to prepare NAPs that provide for the "attainment" of the area designated nonattainment for the SO_2 NAAQS by the statutorily

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[23/] Section 19-2-106(2) of Utah's Air Conservation Act.

[24/] See section 172(c) of the CAA.

prescribed dates.[25] Moreover, section 173(c) sets out the requirements for NAPs, which consistently are imposed only on nonattainment areas.[26]

Key CAA legislative history also confirms that the scope of the required SIP revision is limited to SO_2 nonattainment areas.[27] Specifically, the House Committee Report provides that the statute "establishes SIP submittal and attainment dates for areas that need to do additional planning to attain the SO_2 . . . standards."[28] The Committee Report further provides that "[a]reas that are currently designated nonattainment for SO_2 . . . but which never received full approval of their SIPs under the current law have to submit corrective SIPs within 18 months of enactment showing attainment within five years of enactment."[29]

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[25] For example, subpart 5 to part D of title I of the CAA establishes deadlines for submitting SO_2 SIPs and achieving attainment of the primary SO_2 standard. The statute expressly establishes that these deadlines apply to "areas designated nonattainment with respect to national primary ambient air quality standards for SO_2." See sections 191 and 192 of the CAA. Similarly, the title to subpart 5 provides: "Additional Provisions for Areas Designated Nonattainment for Sulfur Oxides, Nitrogen Dioxide, or Lead." This language also suggests that the scope the revised SO_2 SIP should be limited to areas designated nonattainment for SO_2.

[26] The statute imposes the NAP requirements on either "nonattainment area," see section 172(c)(5) of the CAA, or "such area." See section 172(c)(3), (4), (6) of the CAA. In the latter case, section 172(b) qualifies the term "such area" to mean any area that EPA "promulgates the designation . . . as nonattainment with respect to a national ambient air quality standard under section 107(d). . . ."

[27] EPA confirmed this interpretation in its policy guidance on SO_2 nonattainment area implementation. See Calcagni Memorandum at 1 (stating that this policy guidance applies only to areas classified as nonattainment for SO_2).

[28] H.R. Rep. No. 490, 101st Cong., 2d Sess. 270 (1990). Of course, additional planning is unnecessary for areas designated attainment, since attainment areas by definition do not include areas that violate a NAAQS, or contribute to the violation of a NAAQS in a nearby area. See Section 171(2) of the CAA (providing a definition of "nonattainment area," which incorporates by reference the description of nonattainment designation provided in section 107(d) of the CAA).

[29] H.R. Rep. No. 490 at 271.

2. Utah Limitation on Scope of Revised SIP

In the case of Utah, the Board is under a federal obligation to prepare a NAP only for Salt Lake and Tooele Counties, the two areas in Utah currently designated nonattainment for the SO_2 NAAQS. The Board, of course, could prepare a NAP that also applies to sources located in attainment areas. Since, however, a NAP for such areas would exceed the federal statutory requirements, the Board would be required to meet the requirements of Utah Section 19-2-106.

Again, this would entail the Board making a written finding (supported by "environmental information and studies") concluding that the further regulation of sources located in SO_2 attainment areas is necessary to protect the public health and the environment.

F. Absent The Requisite Finding, Utah May Not Impose Limits Unnecessary For NAAQS Protection.

Utah law also limits the circumstances under which the Board may convert long-term SO_2 emissions limitations into three-hour average emission limitations.

The first involves situations where the Board has determined three-hour averaging is necessary to protect the SO_2 NAAQS. In this case, the Board has a legal obligation under the federal CAA to establish emissions limitations sufficient to achieve and maintain the NAAQS. Utah's SIP proposal indicates that the Board has made no determination regarding the necessity of imposing these stricter emissions limits.[30/]

[30/] EPA also has admitted that it has made no factual determination regarding the adequacy of Utah's existing SO_2 SIP limitations. Specifically, EPA has stated in the Executive Summary of the Yellow Book that the "[a]dequacy of the SIP and emission limitations to attain air quality standards was not included in this review, nor were review of, or revisions to, the demonstrations of attainment required in this effort."

The second involves situations where the Board decides to establish SO_2 emissions limitations more stringent than are necessary to protect the SO_2 NAAQS. This could occur in cases where the Board shortens the compliance averaging times from thirty days to three hours. Under these circumstances, Utah law would require the Board first to make the requisite written finding that the more stringent three-hour averaging standard is somehow necessary to protect the public health and the environment (although it was not necessary for the protection of the SO_2 NAAQS).

As discussed below, not only has the Board made no such finding, but also, based on the best available air quality data, it could not make such a finding.

G. Air Quality Data Demonstrates That IPP's Thirty-Day Limit Provides More Than Adequate NAAQS Protection.

Considerable factual evidence exists that supports the conclusion that the three-hour SO_2 standard is not jeopardized in any manner by the SO_2 emitted from the Intermountain facility. This is evidenced by (1) State-wide compliance with SO_2 NAAQS (even in the nonattainment areas) for over ten years; (2) actual ambient air quality data recorded by IPP over a recent three-year period; and (3) extensive air impact analyses performed by IPP through meteorological dispersion modeling. This section will briefly discuss each of these items.

1. State-Wide Compliance with NAAQS

Utah currently has two areas designated nonattainment for SO_2: portions of Salt Lake County and Tooele County.[31/] Both counties are a part of the Wasatch Front Intrastate Air Quality Control Region.[32/]

Although Salt Lake and Tooele are designated nonattainment for both the primary and secondary SO_2 NAAQS, Utah has not recorded a NAAQS violation for these areas since 1980. This record strongly evidences that the SO_2 emissions from the IPP facility (since it commenced operation in 1986) do not jeopardize the SO_2 air quality of either nonattainment area.

In addition, the past violations for Salt Lake and Tooele Counties arose from the Kennecott Copper Mine Smelter, which is more than 80 miles from the IPP facility. The potential air quality impacts of long-range SO_2 transport should not pose significant threats to short-term SO_2 air quality standards.

2. Actual Ambient Air Quality Data

IPP has conducted extensive ambient air quality monitoring for SO_2 and other air pollutants since the Intermountain facility commenced commercial operation in 1986. The ambient air quality program was implemented pursuant to IPP's PSD-permit requirements and conformed with EPA's air monitoring standards codified at 40 C.F.R. part

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31/ 40 C.F.R. § 81.345 (1991); see also 43 Fed. Reg. 40434 (1978).

32/ 40 C.F.R. § 81.52 (1991). Cedar City, a third area that was designated as nonattainment in 1978, has subsequently been redesignated by the EPA as in attainment. See 48 Fed. Reg. 54348 (1983).

58. The purpose of the monitoring program was to establish the distribution and magnitude of emissions from the Intermountain facility under documented meteorological conditions.[33/]

IPP performed the air quality and meteorological monitoring from June 1986 through May 1989. In the case of SO_2 concentration levels, samples were taken continuously and averaged hourly. The monitors were located around the IPP facility where dispersion modeling had predicted maximum concentrations would occur.

The ambient air quality data recorded over the three-year period clearly demonstrated that the facility's emissions never posed a risk to either the short-term or annual SO_2 standards. In fact, the concentration levels for all averaging times were representative of typical background SO_2 levels in rural areas throughout the three-year monitoring program.[34/]

For example, the maximum three-hour SO_2 concentration level recorded by any monitor was only 2 parts per hundred million (pphm), which is only 4 percent of the corresponding federal secondary standard of 50 pphm. Similarly, the maximum 24-hour level recorded at any monitor was 1 pphm. This highest recorded level was only 7 percent of the federal standard of 14 pphm. Finally, the annual average SO_2 level recorded at all monitors for all three years was 0 pphm, thus posing no threat to the federal standard of 3 pphm.[35/]

[33/] In addition to monitoring the ambient concentrations of SO_2, IPP simultaneously monitored at the SO_2 monitoring station key meteorological parameters, including the direction and speed of the wind.

[34/] See Final Report (June 1986 - May 1989): Air Quality/Meteorology Data, Intermountain Power Project--Sites 1, 2 and 3, Intermountain Generating Station, Delta, Utah, Los Angeles Department of Water and Power, prepared by Dames & Moore (August 3, 1989) (attached hereto in Attachment C) [hereinafter "Final Report on Air Quality"].

[35/] See Final Report on Air Quality at 5-8.

3. Air Impact Analyses Through Dispersion Modeling

In 1978 and again in 1983, IPP performed extensive meteorological dispersion modeling of the emissions from the Intermountain facility. Among other things, these analyses focused on the possible impact of IGS's SO_2 emissions on the air quality in the vicinity of the power plant and Tooele County, the latter of which is classified as nonattainment for SO_2 air quality standards.[36/]

The source input parameters used in the dispersion modeling calculations were quite conservative. For example, the short-term SO_2 emissions data were based on the assumption that the Intermountain facility was operating at maximum possible load.[37/] Similarly, the meteorological data input was based on worst case meteorological conditions derived from representative weather observations.[38/] The conservativeness of these source input parameters, along with the inherent systematic bias toward overestimation of the modeling calculations, have produced reliable worst-case concentration estimates.

The results of IPP's modeling analyses indicate that the calculated maximum ground-level concentrations are far below the corresponding ambient air quality standard. The calculated values are 3 pphm for three hours, 1 pphm for 24 hours, and .04 pphm for one

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[36/] See Calculated Air Quality Impact Emissions from the Intermountain Generating Station (IGS) -- Two Unit Configuration, prepared by H.E. Cramer Company, Inc. (May, 1983) (attached hereto in Attachment D) [hereinafter "Cramer Air Modeling Report"].

[37/] See Cramer Air Modeling Report at 11.

[38/] See Cramer Air Modeling Report at 24-28, 48-51.

year. These values amount to only about 6, 7, and 1 percent of corresponding federal standards.[39/]

4. Conclusions

The above air quality data, both individually and collectively, demonstrate that the emissions standards established for the Intermountain facility provide more than adequate protection to all of the ambient air quality standards for SO_2. Moreover, this protection is not undermined by the fact that the SO_2 emissions limitations are not expressed in terms of three-hour averaging times. In light of this data, Utah law precludes the Board from imposing a three-hour averaging time.

H. **Utah Is Precluded From Mechanically Converting IPP's NSPS Percent Reduction Requirement Or BACT Limit.**

In the event that the Board could make a finding that a three-hour compliance averaging time might be necessary to ensure the protection of the ambient air quality standard, IPP strongly opposes the current approach proposed in EPA's policy guidance. That approach would require mechanical conversion of IPP's existing thirty-day average limitations into three-hour limitations. As described below in greater detail, IPP believes that this approach has serious flaws.

1. The NSPS Percent Reduction Requirement

The Intermountain facility is subject to NSPS requirements under section 111 of the CAA. These standards include a requirement that IPP operate a SO_2 control system that achieves a 90 percent SO_2 reduction on a thirty-day rolling average.[40/]

[39/] Cramer Air Modeling Report at 48-51. The corresponding federal standards are 50 pphm for three hours, 14 pphm for 24 hours, and 3 pphm for one year.

[40/] See 40 C.F.R. § 60.43a(g) (1991).

IPP believes it to be completely inappropriate for the Board or EPA to shorten the compliance averaging time for this NSPS percent reduction requirement from thirty days to three hours.

The NSPS percent reduction requirement is a technology-based standard that reflects what EPA has determined to be technologically feasible for state-of-the-art scrubber systems to achieve. In the NSPS rulemaking, EPA concluded that a 24-hour averaging period is impractically short as minute-to-minute variations in factors affecting FGD efficiency may not be compensated for instantaneously.[41/] To alleviate concerns regarding coal sulfur variability and to provide adequate operational flexibility, EPA determined that the percent reduction requirement should be based on a thirty-day rolling average.[42/]

Shortening the compliance averaging time for the NSPS percent reduction requirement to three hours would obviously run contrary to the conclusions reached in the NSPS rulemaking. Moreover, such a shortened averaging time would further exacerbate the problems associated with a 24-hour averaging period. Among other things, this constraint would (1) eliminate much of the intended operational flexibility provided under the NSPS rule; and (2) impose considerable additional expenses on IPP and its ratepayers without any commensurate environmental benefit.[43/]

41/ See 44 Fed. Reg. at 33,595 (1979).

42/ Id.

43/ In addition, EPA did not provide an exemption from the NSPS percent reduction requirement in cases of FGD malfunction. Among other things, EPA concluded that an exemption is not necessary when one scrubber module malfunctions because the utility operator will be able to compensate through reducing load levels at the unit and the flexibility provided by a thirty-day compliance averaging time. If the thirty-day averaging period was shortened to 3 hours, utilities would again lose much of the intended operational flexibility provided under the NSPS rule. See 44 Fed. Reg. at 33,597-98.

2. BACT Limitation

The IGS is subject to a SO_2 emissions rate limitation of 0.15 lbs/mmBtu. The compliance averaging time for this rate limitation is also thirty days.

As the Board is aware, the 0.15 lbs/mmBtu limitation represents "best available control technology" or "BACT." BACT limits are to be determined on a case-by-case basis after taking into account energy, environmental, and economic impacts, as well as other costs.[44/] In establishing the BACT determination for the Intermountain facility, the permitting authority considered a variety of local factors, such as the size of the plant, the amount of air quality increment consumed, and desired economic growth in the area of the new facility.

IPP believes that the permitting authority struck a balance when establishing the source-specific BACT limitation for the Intermountain Generating Station. Neither the extremely stringent rate of 0.15 lbs/mmBtu nor the thirty-day compliance averaging time should be revised downward, unless the State or EPA can demonstrate that the three-hour SO_2 standard is compromised. IPP believes this cannot be demonstrated.

I. Guidelines For Three-Hour Limits Should Be Based On Relevant Source-Specific Factors.

IPP recognizes that situations (other than the Intermountain facility) may arise where three-hour SO_2 limitations could be necessary to ensure the protection of the short-term SO_2 ambient air quality standards. In such cases,[45/] IPP believes the short-term limitations

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[44/] See section 169(3) of the CAA.

[45/] IPP emphasizes that states would have to make a source-specific determination regarding the stationary sources requiring a three-hour limitation to protect the SO_2 NAAQS. As discussed above in Section III.G., this situation clearly has not arisen in the case of the Intermountain facility.

should be based on various source-specific factors that are relevant to determining the potential air quality impacts of the source's SO_2 emissions on the three-hour and 24-hour standards. As discussed above, a source's three-hour limitation should never be determined by mechanically converting their existing long-term SO_2 limitations.

This section provides general guidelines that states could follow in developing three-hour SO_2 limitations.

1. Equivalency Approach

States should retain without change the existing long-term SO_2 limitations applicable to sources. If states determine that a three-hour limitation is necessary for the protection of the short-term SO_2 NAAQS, they could prescribe an equivalent three-hour SO_2 limitation based on the existing long-term SO_2 limitation. The equivalent limitation always would have a numerical limit higher than the long-term limitations and would not exceed the level of SO_2 control necessary to protect the three-hour SO_2 standard.

2. Source-Specific Factors

Assuring the attainment and maintenance of the short-term SO_2 NAAQS in the vicinity of sources requires a careful analysis of a wide-range of source-specific factors. These factors include the numerical emissions limitation, the averaging time of the limit, the observed meteorological conditions in vicinity of the facility, the type of SO_2 emissions controls installed at the facility, sulfur content and sulfur variability of the coal burned, and air impact analyses determined through dispersion modeling.[46/]

[46/] IPP believes that EPA's exclusive focus on the averaging period -- without considering these other factors -- is unjustifiable and would be subject to legal challenge.

Based on an evaluation of these factors, it might be appropriate to impose an equivalent short term SO_2 limitation in cases where a source (1) operates with no FGD scrubber system; (2) burns high-sulfur coal with a significant natural variation in the sulfur levels; and (3) could be subject to meteorological conditions that significantly inhibit SO_2 dispersion. On the other hand, it would be appropriate for states not to impose an equivalent short term standard in cases where the source operates with a FGD scrubber system, burns low-sulfur coal, and is subject to very stringent thirty-day emissions limitations. In the latter case, the source's thirty-day limitation(s) most likely would be sufficient to protect the short-term SO_2 NAAQS because of the low SO_2 emissions levels achieved at the facility on a thirty-day average. In addition, any potential significant short-term variation in the sulfur content in the coal being combusted would most likely be minimized by the source's FGD system.[47/]

3. EPA Guidelines for SO_2 Averaging

As mentioned above, EPA had initiated, at an earlier time, a review of its policies and procedures for regulating large coal-fired boilers. One key aspect of EPA's review was to develop guidelines for establishing emissions limitations that would ensure the protection of the three-hour and 24-hour SO_2 standards. EPA, however, never completed action on this rulemaking.

Some guidelines from EPA may be appropriate and necessary to ensure that states establish emissions limitations capable of protecting the short-term SO_2 NAAQS. Given the national importance of the issues raised in the rulemaking, IPP believes it would be more

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47/ Even if the source operates without a scrubber, statistical data on the sulfur variability of the coal it burns can demonstrate that by meeting the appropriate 24-hour SO_2 emissions limitation, the source's short-term emissions will be low enough so that they will not interfere with the attainment and maintenance of the short-term SO_2 ambient standard.

appropriate for EPA to resolve SO_2 averaging issues before states begin to proceed in a piecemeal fashion.

Of course, any guidelines developed by EPA having substantial impacts on regulations would require a full airing of public views pursuant to notice and comment rulemaking.

IV. COMMENTS ON UTAH'S PROPOSED SIP CHANGES

The Board has proposed significant revisions to Rule 4.2 on "Sulfur Content of Fuels" and Rule 4.6 on "Continuous Emissions Monitoring System Program." IPP has several concerns regarding these proposed SIP revisions. As discussed in greater detail below, the proposed revisions contain ambiguous language that could have the effect of imposing onerous and redundant SO_2 compliance requirements on NSPS-regulated sources, even though they are (1) already subject to very stringent SO_2 limits and percent reduction requirements; (2) located in attainment areas; and (3) currently operate with a continuous emissions monitoring system (CEMS) for SO_2.

Recent indications from the Utah Department of Environmental Quality (DEQ) indicate that these consequences may not have been specifically contemplated in the drafting of the proposed revisions. IPP urges the Board to reexamine its SIP proposal and make technical changes to proposed Rules 4.2.1 and 4.6.2 to correct the specific problems and concerns identified below. Technical amendments to the proposed SIP revisions correcting these problems and concerns are attached in Attachment E.

A. Proposed Changes To Rule 4.2.1 Should Not Apply To NSPS-Regulated Sources Or Sources Located In Attainment Areas.

Rule 4.2.1 of the Utah SIP establishes sulfur content limitations for coal and oil combusted by sources not subject to NSPS requirements for SO_2 emissions. The proposed SIP changes to Rule 4.2.1 would establish that the prescribed sulfur content would now be based upon a three-hour rolling average. In addition, the proposed changes would establish new requirements for fuel sampling and analysis (FSA), which also would be based on three-hour averaging times. IPP has the following concerns with these proposed SIP revisions.

1. Applicability to NSPS-Regulated Sources

As drafted, the proposed revisions to Rule 4.2.1 have the unintended result of applying to NSPS-regulated sources. In particular, the Board's proposal contains language suggesting that the sulfur content and FSA requirements apply to "all major sources as defined in Section 501 of the Clean Air Act."[48/] Section 501 provides a very broad definition of major sources, which would include NSPS-regulated utility sources, as well as those plants not subject to NSPS.

As drafted, the Board's proposed language would be inconsistent with the intended scope of the rule. In addition, the language would be inconsistent with another provision in proposed Rule 4.2.1, which states that the sulfur content limitations of Rule 4.2.1 apply only to "any fuel burning or process installation not covered by New Source Performance Standards."

[48/] See Rule 4.2.1.B of the Utah SO_2 SIP.

IPP recommends that the Board amend its proposed language to clarify that only sources not subject to NSPS are covered under Rule 4.2.1. This clarification would ensure that the rule is internally consistent and reflects the express intent of DEQ regarding the scope of the rule. Technical amendments clarifying these issues are attached in Attachment E.

2. Applicability to Attainment Areas

As drafted, the requirements of proposed Rule 4.2.1 would apply to affected sources located in attainment areas, as well as nonattainment areas. As discussed above, this approach exceeds the federal CAA standards for SO_2 NAPs, which require Utah to submit a NAP for only those areas designated as nonattainment. Under Utah law, the Board is precluded from implementing State requirements more stringent than the corresponding federal requirements until the Board has made the requisite written finding (supported by "environmental information and studies") that a NAP for attainment areas is necessary to protect the public health and environment.

IPP recommends that the Board expressly clarify that its rule applies only to sources located in SO_2 nonattainment areas. Again, clarifying language to Rule 4.2.1 is provided in Attachment E.

3. FSA Requirements

As drafted, the new FSA provisions in Rule 4.2.1 could require the Intermountain facility to conduct coal testing for sulfur every three hours even if the facility is not subject to a sulfur content limitation and currently monitors its SO_2 emissions with a CEMS. In addition, the Intermountain facility is currently using only Utah coal. IPP does not know of any Utah coal that has a sulfur content greater than 1.0 pound sulfur per million Btu heat input. Yet, if Rule 4.2.1 is adopted as proposed, IPP will have to conduct coal

testing for sulfur every hour for at least six months. Contrary to its intended purpose, Rule 4.2.1 also requires coal analysis for sulfur even if a source has a CEMS.

IPP believes that it makes no sense from an environmental or cost-benefit perspective to impose the proposed FSA requirements under the above circumstances. The requirements will impose considerable additional expenses to IPP's ratepayers without any commensurate environmental benefit. In addition, the requirements could pose serious technical and operational difficulties to IPP if the coal must be sampled "as-fired after the bunker."

IPP recommends that the proposed FSA provision should contain exclusions for sources that use CEMS to monitor their SO_2 emissions. Technical amendments regarding FSA are provided in Attachment E.

B. Proposed Changes To Rule 4.6.2 Should Not Apply To NSPS-Regulated Sources Or Sources Located In Attainment Areas.

Rule 4.6.2 of the Utah SIP establishes the CEMS monitoring and reporting requirements. In their current form, these requirements apply to fossil fuel fired steam generating units (250 million Btu/hour for each boiler), including the two main coal-fired boilers at the Intermountain facility.

The Board has proposed a revision to Rule 4.6.2 that would require that the CEMS monitoring and reporting requirements be based on three-hour averaging times. The Board's proposal, however, can be interpreted to apply to all such steam generating units, whether or not they are subject to NSPS. Similarly, sources located in both attainment and nonattainment areas would become subject to the shorter averaging times under the Board's proposal.

For the same reasons discussed above,[49/] IPP believes it is inappropriate for the proposed three-hour averaging requirement to be imposed on NSPS-regulated sources and sources regulated in SO_2 attainment areas. Again, these reasons include the fact that the Board's proposal would be inconsistent with the intent of the proposed rule change, which was to specify an averaging time for sources required to meet the 1.0 pounds per million Btu limits in Rule 4.2.1.

On a more fundamental level, IPP questions the appropriateness of establishing a three-hour monitoring requirement if those requirements serve no useful compliance function. IPP is concerned that imposing three-hour averaging times for monitoring represents the first step of a regulatory path that ultimately could lead to the imposition of a corresponding three-hour SO_2 limitation on the Intermountain facility. IPP strongly opposes this trend unless the Board can show that the more stringent limits provide a significant environmental benefit and are required under federal CAA law.

[49/] See supra Section IV. A (discussing the proposed SIP changes to Rule 4.2.1).

In addition, the Board's proposal raises numerous technical concerns if three-hour monitoring were to be imposed on NSPS-regulated utility sources such as the Intermountain facility. For example, no guidance is provided by the Board as to how the monitoring requirements for three-hour averaging would be integrated into the existing NSPS emissions monitoring requirements. The NSPS monitoring regulations are based on compliance averaging periods of 30 days, 40 C.F.R. § 60.43a(g), and require data collection for 18 out of 24 hours during 22 out of 30 operating days. Id. at §§ 60.47a(f), 60.49a(b). Similar questions will arise once EPA promulgates final acid rain regulations on continuous emissions monitoring requirements.

V. RECOMMENDATIONS

IPP has presented detailed comments on the broader policy issues of EPA's policy guidance on SO_2 averaging, as well as the specific rule changes proposed to the Utah's SO_2 SIP. Both of these issues are of great importance to IPP.

As to EPA's policy guidance, IPP has raised a number of questions regarding the legal status of the guidance. EPA has characterized its guidance as "nonbinding" statements of general policy, but has attempted to implement it through the Yellow Book as a generic legislative rule.

IPP recommends that the Board, as a first step, obtain clarification from EPA as to the legal status of its policy guidance. If EPA intends to require states to impose a three-hour averaging period on SO_2 SIP limitations in every case, IPP believes that this major shift in policy could be accomplished only pursuant to notice and comment rulemaking as required by the CAA and the Administrative Procedures Act. If, however, this is not the intent of EPA, then Utah and other states should be allowed truly to exercise discretion in developing SIP compliance strategies for stationary sources located within their boundaries.

IPP's comments also have outlined many of the requirements imposed under the federal CAA and Utah law that limit the Board's discretion in developing the proposed SO_2 revisions. Among other things, these requirements preclude the Board -- absent the requisite written findings -- from developing a revised SIP that applies to SO_2 attainment areas or imposes SO_2 limits that are unnecessary for the protection of the SO_2 NAAQS. In addition, IPP believes that it would be inappropriate under federal CAA to mechanically convert the existing NSPS percent reduction requirement and the BACT limit that are applicable to the Intermountain facility.

IPP urges the Board to adhere to these federal and Utah requirements in developing its proposed SIP changes to Rule 4.2 on sulfur content and Rule 4.6 on CEMS. For example, as to the scope of the proposed changes to these rules, IPP recommends that they only apply to sources located in SO_2 nonattainment areas. Similarly, the proposed changes should only apply to sources that are not subject to NSPS regulation. IPP believes this approach will ensure that Utah develops a revised SIP that is consistent with the federal and Utah requirements and meets the federal deadline of May 15, 1992 for submitting the NAP.

As to the proposed FSA requirements, IPP recommends that the Board's proposal contain an exception for sources that use CEMS to monitor their SO_2 emissions. Such an exception will ensure consistency with the intent of the proposed rule. In addition, IPP recommends that the proposed three-hour averaging requirement should only be imposed on the non-NSPS sources.

IPP appreciates the opportunity to submit these comments and hopes they are helpful to the Board in developing SO_2 SIP revisions that ensure the protection of the SO_2 NAAQS in an environmentally rational manner.